Supreme Court of the United States.

OCTOBER TERM, 1899.

No. 264.

THE AMERICAN SUGAR REFINING COMPANY,
PLAINTIFF IN ERROR,

vs.

THE STATE OF LOUISIANA AND JOHN BREWSTER, STATE TAX COLLECTOR, SECOND DISTRICT, PARISH OF ORLEANS, STATE OF LOUISIANA.

IN ERROR TO THE SUPREME COURT OF THE STATE OF LOUISIANA.

MOTION TO DISMISS OR AFFIRM AND BRIEF IN SUPPORT THEREOF.

To the Honorable the Chief Justice and Associate Justices of the Supreme Court of the United States:

Now comes the State of Louisiana and JOHN BREWSTER, State Tax Collector of the Second District, City of New Orleans, defendants in error, by their undersigned counsel, and moves to dismiss this writ of error because (1) this Honorable

Court is without jurisdiction to determine the controversy which this record presents.

(2) That there is not necessarily involved any issue of fact or law arising under the Constitution and laws of the United States.

(3) That the claim made by plaintiff in error in its answer, that Sec. 9 of Act 150 of 1890 of the General Assembly of the State of Louisiana, discriminated against it, and denies to it the equal protection of the law secured to all persons by the fourteenth amendment of the Constitution of the United States, in that said Section 9 imposed a license tax on refiners of sugar who were not planters, does not present a Federal question, for such question was not the principal matter litigated, but was put in the record for the purpose of obtaining this writ of error. And without waiving the foregoing, but persisting therein, and urging same as well founded, your movers, availing themselves of the right under Rule 6, Sec. 5 of the Rules of this Honorable Court, move to unite with the motion to dismiss this, their motion to affirm, upon the ground that even if this record discloses that this Court has jurisdiction, it is manifest the writ was taken for delay only, and the question upon which such alleged jurisdiction depends is so frivolous as not to need further argument.

Wherefore, movers pray that this motion to dismiss be granted and the writ of error dismissed for want of jurisdiction; but should said motion be not allowed for the reasons set forth, the judgment of the Supreme Court of Louisiana be finally affirmed with costs, and movers pray for such other and necessary relief which the nature of the case may require.

E. HOWARD MCCALEB,
Attorney for Defendant in Error.

ARGUMENT ON MOTION TO DISMISS.

Action was instituted by the State of Louisiana against the American Sugar Refining Company, plaintiff in error, to compel payment of a license tax for the years 1892 to 1897, inclusive, under provisions of Sec. 9 of Act 150 of 1890 of the General Assembly of Louisiana (R. p. 2). Section 9 of said act provided: "That for carrying on each business of "gas light, * * * *refining sugar and molasses* * * * the "license shall be based on the gross annual receipts of each "person, association of persons, business firms or corpora- "tions engaged in said business, as follows, provided, that "this section shall not apply to planters and farmers grind- "ing and refining their own sugar and molasses, or gin- "ning their own cotton or that of their tenants, or manu- "facturing their own cotton seed into meal, cake or oil, or "work by machinery for plantation or farm purposes, * * * "and provided further that it shall not apply to those plan- "ters who granulate syrup for other planters during the "rolling season.

"*First Class*—When the said gross annual receipts are "Two Million Five Hundred Thousand ($2,500,000) Dollars "or over, the license shall be $3500."

The license is graduated into twenty classes, plaintiff in error falling into the *first class*, it being admitted that its gross annual receipts exceeded during each of the years named the sum of two and a half million dollars (R., pp. 11 and 12).

In its answer the American Sugar Refining Company, plaintiff in error, claimed that the refining of sugar and molasses was manufacturing, and because of its business as refiners conducted by means of mechanical appliances, it was engaged in a mechanical pursuit, and was thereby exempted

from license taxation under Art. 206 of the Constitution of Louisiana of 1879, which excepts from taxation such persons "engaged in mechanical, agricultural, horticultural and mining pursuits and manufactories."

The claim is then made that "The Act No. 150 of 1890 "violates the Constitution of the United States, and is void "in so far as it attempts to impose a license tax on this de- "fendant, because said act denies to this defendant the equal "protection of the law of the State, inasmuch as said act "does not impose equally a license tax on all persons en- "gaged in the business of refining sugar and molasses, but "discriminates in favor of planters who granulate syrups "for other planters during the rolling season, and therefore "said act conflicts with the fourteenth amendment of the "Constitution of the United States, which prohibits any "State from depriving a person of his property without due "process of law and from denying to any person within its "jurisdiction the equal protection of the law."

Perusal of this record clearly discloses that, the principal and only matter litigated, and decided adversely to plaintiff in error (R., p. 42) was the issue of exemption *vel non* from taxation as a manufacturer under the provisions of Art. 206 of the State Constitution and Act 150 of 1890. Of such, this Court has no concern, for it is universally recognized that where there is no Federal question, the construction of State statutes and constitutions by the highest court of a State can not be inquired into. Bisland vs. Provosty, 14 La. An. 169, 174; Am. and Eng. Enc. of Law, Vol. 27, p. 610, Vol. 21, p. 283; 107 U. S. 120; 125 U. S. 555; 142 U. S. 293; Hermann on Estoppel, Vol. 1, p. 684.

Considering the rule of construction of the statutes and Constitution of the State by the Supreme Court of Louisiana to be final, and considering the admission of record that

plaintiff in error is not engaged in the business of granulating syrups, nor is it a planter, or farmer, nor does it manufacture its own sugar and molasses, nor does it granulate syrups for planters during the rolling season, no Federal question is involved, and the decision on the claim of a Federal nature set up in the answer was unnecessary. It therefore follows that the decision of the Supreme Court of Louisiana, resting upon a non-federal question, is of itself sufficient to support the judgment.

This rule is reiterated in Bacon vs. Texas, 163 U. S. 207, and decisions there cited, that—

> "Where there are two grounds for the judgment of a State "Court one only of which involves a Federal question, and the other "is broad enough to maintain a judgment sought to be reviewed, "this Court will not look into the Federal question.
>
> "When a State Court has based its decision on a local or State "question and this Court in consequence finds it unnecessary to "decide a Federal question raised by the record the logical course "is to dismiss the writ of error."

See also White vs. Leovy, 174 U. S., p. 95.

Remington Paper Co. vs. Watson, 173 U. S. 443.

Eustis vs. Bolles, 150 U. S. 361.

California vs. Halliday, 159 U. S. 415.

Rutland vs. Central, 159, 630.

Gillis vs. Stinchfield, 159 U. S. 658.

Senaca vs. Christy, 162 U. S. 783.

We respectfully pray that the motion to dismiss be maintained.

ARGUMENT ON THE MOTION TO AFFIRM.

That the federal question presented by the answer was not the principal matter litigated, but was put in the record for the purpose of obtaining this writ of error and further delays, requires no demonstration. There is color for a motion to

dismiss which presents for consideration this motion to afirm even if it should be held that the federal question is not as frivolous as we maintain.

East Tenn. vs. Frazier, 139 U. S. 288, 292.

Douglas vs. Wallace, 161 U. S. 346.

In Thormann vs. Frame, 176 U. S. page 350, it is said.

> "However, while we think that on the record there was color for "the motion to dismiss we shall decline to sustain that motion in- "asmuch as the Supreme Court in its opinion considered the par- "ticular question here presented but will dispose of the case on the "motion to affirm, as the ruling of that Court so far as open to our "examination is so obviously correct under the circumstances that "further argument is unnecessary."

The opinion of the lower court holds in substance that defendant is not a manufacturer within the intendment of Art. 206 of the Constitution of 1879 and Act 150 of 1890, Sec. 9. Plaintiff in error admits it is not a planter or farmer refining his or its own sugar or molasses, nor a planter who granulates syrups for other planters during the rolling season. These admissions rendered the decision on the federal question unnecessary, thereby giving color for the motion to dismiss. Sec. 9 of Act 150 of 1890 classifies two different occupations—the refiner who purchases, refines and sells—the agriculturist who manufactures his own products. In the former class no person similarly situated is excepted, and, therefore, defendant can not complain; in the latter class the exception springs from the Constitution of Louisiana (1879) Art. 206. The planter who refines his own sugar is likened unto the tailor who scours his own clothes, or the clothes of his making, while the refiner is likened to the case of the scourer, who buys clothes from the tailor and sells them after the scouring process. Thus, the planter who refines his own sugar belongs to a different class, and is engaged in a different kind of

business from the person who purchases manufactured sugar and sells the same after the refining process. Really, the planter is the manufacturer of sugar, and the refining by him is merely a process of cleaning or purifying, and though not necessarily connected with his occupation as a manufacturer, is an incident thereto.

It is therefore clear that if there is no discrimination in favor of one as against another *of the same class*, equal protection of the law is afforded, for it is axiomatic in the jurisprudence of this Court, that special legislation is not obnoxious to the last clause of the Fourteenth Amendment if all persons subject to it are treated alike. In Giozza vs. Tiernan, it was held that the Fourteenth Amendment was not intended to compel the States to adopt an iron rule of equality as to taxation, or to prevent the classification of property for taxation at different rates, or to prohibit legislation in that regard, special either in the extent to which it operates or the subjects sought to be attained. It is enough that there is no discrimination in favor of one as against another of the asme class.

Giazza vs. Tiernan, 148 U. S. 657, Missouri Pacific Railroad Company vs. Mackay, 127 U. S. 205.

Minneapolis & St. Louis Railroad Company, Herrick 127 U. S. 210.

Duncan vs. Missouri, 152 U. S. 377.

Walston vs, Nevin, 128 U. S. 578.

Columbus Railroad Company vs. Wright, 151 U. S. 470.

Pittsburg, C. C. & St. Louis Railroad vs. Backus, 154 U. S. 421.

Charlotte Railroad Company vs. Gibbs, 142 U. S. 386.

Pacific Express Company vs. Seibert, 142 U. S. 339.

Santa Clara County vs. Railroad Company, 118 U. S. 394.

Milling Company vs. Penna, 125 U. S. 187.
Murtes vs. Holland, 114 U. S. 606.
Railroad Company vs. Richmond, 96 U. S. 321.
Express Co. vs. Seibert, 142 U. S. 339, is analagous.

"The legislation in question can not be considered as invidiously "discriminating against the express companies defined by it in "favor of other companies or persons that may carry express "matter on certain other conditions or under different circum- "stances. There is an essential difference between express com- "panies defined by this act and railroad and steamboat companies "or other companies that own their own means of transportation.

"The vital question is this: Railroad companies pay taxes on "their roadbeds, rolling stock and other tangible property, etc.

"This distinction clearly places express companies defined by "this act in a separate class from other companies owning their "own means of transportation. They do not do business under "the same conditions or under similar circumstances. In the "nature of things and irrespective of the definitive legislation in "question, they belong to different classes. There can be no "objection, therefore, to the discrimination made as between "express companies defined by this act and other companies "or persons incidentally doing a similar business by different "means and methods in the manner in which they are taxed."

We, therefore, pray if the motion to dismiss be not allowed that this motion to affirm be maintained and a judgment of affirmance be granted accordingly.

E. Howard McCaleb,
Attorney for Defendant in Error.